

Message Text

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SUBJ: FURTHER GOI ACTION SUSPENDING THE ENFORCEMENT
OF CONSTITUTIONALLY-GUARANTEED RIGHTS

1. THE PRESIDENT OF INDIA ISSUED AN ORDER JANUARY 8
SUSPENDING FOR THE PERIOD OF THE EMERGENCY THE RIGHT
OF ANY PERSON TO SEEK COURT-ENFORCEMENT OF ANY RIGHTS
CONFERRED BY ARTICLE 19 OF THE INDIAN CONSTITUTION.
ARTICLE 19 (1) ENUMERATES THE SO-CALLED SEVEN FREEDOMS
OF AN INDIAN CITIZEN, AND READS IN ITS ENTIRETY AS
FOLLOWS:

ALL CITIZENS SHALL HAVE THE RIGHT --

- (A) TO FREEDOM OF SPEECH AND EXPRESSION;
- (B) TO ASSEMBLE PEACEABLY AND WITHOUT ARMS;
- (C) TO FORM ASSOCIATIONS OR UNIONS;
- (D) TO MOVE FREELY THROUGHOUT THE TERRITORY OF

INDIA;

(E) TO RESIDE AND SETTLE IN ANY PART OF THE
TERRITORY OF INDIA;

(F) TO ACQUIRE, HOLD AND DISPOSE OF PROPERTY; AND
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(G) TO PRACTISE ANY PROFESSION, OR TO CARRY ON

ANY OCCUPATION, TRADE OR BUSINESS.

2. THE GOI ANNOUNCEMENT OF THE NEW ORDER RECALLED THAT CERTAIN RIGHTS CONFERRED UNDER OTHER ARTICLES IN THE FUNDAMENTAL RIGHTS SECTION OF THE INDIAN CONSTITUTION HAD ALREADY BEEN SUSPENDED BY PRESIDENTIAL ACTION JUNE 27, 1975. THESE RIGHTS INCLUDE THE RIGHT OF EQUALITY BEFORE THE LAW (ARTICLE 14), THE RIGHT NOT TO BE DEPRIVED OF LIFE OR PERSONAL LIBERTY EXCEPT ACCORDING TO PROCEDURE ESTABLISHED BY LAW (ARTICLE 21), AND THE RIGHT OF PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES (ARTICLE 22).

3. THE PRESIDENTIAL ORDER HAS BEEN MADE EXPRESSLY APPLICABLE TO SUITS NOW PENDING IN INDIAN COURTS BASED ON ALLEGED VIOLATIONS OF ARTICLE 19 RIGHTS. FOR EXAMPLE, THE ORDER WILL PROBABLY FIGURE IN (1) THE HIGH COURT IN BOMBAY'S JUDGEMENT ON AN APPEAL BY THE GOI AND MAHARASHTRA GOVERNMENT AGAINST A LOWER-COURT DECISION SETTING ASIDE THE CENSOR'S PROHIBITION OF THE PUBLICATION OF TWO ARTICLES BY A LOCAL DAILY, AND (2) THE AHMEDABAD HIGH COURT'S CONSIDERATION OF A WRIT PETITION FILED BY A GUJARATI DAILY IN RAJKOT CHALLENGING THE IMPOSITION OF PRE-CENSORSHIP. THERE ARE ALSO TWO CASES PENDING BEFORE THE SUPREME COURT WHICH COULD BE AFFECTED BY THE ORDER. IN ONE, THE GOI IS ARGUING THAT THERE IS NO SCOPE FOR EVEN HABEAS CORPUS PETITIONS BY DETAINEES BECAUSE NO CIVIL LIBERTIES EXIST DURING THE EMERGENCY AND EVEN ILLEGAL ARRESTS ARE NOT SUBJECT TO JUDICIAL REVIEW. IN THE OTHER CASE, THE MAHARASHTRA GOVERNMENT IS ARGUING THAT THE BOMBAY POLICE COMMISSIONER CAN BAN PRIVATE AS WELL AS PUBLIC MEETINGS UNDER THE EMERGENCY.

4. COMMENT: THIS LATEST PRESIDENTIAL ORDER, THE FIRST SUCH ORDER SUSPENDING THE "SEVEN FREEDOMS", IS DESIGNED TO OBSTRUCT FURTHER DETAINEES' RECOURSE TO THE COURTS. IT WILL MORE GENERALLY HAVE A FURTHER CHILLING EFFECT ON THE CONDITION OF INDIVIDUAL RIGHTS HERE. THE ONLY POSITIVE COMMENT TO MAKE IS THAT THE LIMITED OFFICIAL USE

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FACT THAT THE PRESENT GOVERNMENT IS COMPELLED TO RESORT TO SUCH AN ORDER DOES AT LEAST TESTIFY TO THE REFUSAL OF SOME MEMBERS OF THE JUDICIARY TO YIELD TO THE ASSAULT ON THE GOI'S OPPONENTS.
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